

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE

v.

**RONALD N. JOHNSON,**

Defendant.

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I.D. No. 9812007273A

Submitted: July 1, 2011

Decided: August 5, 2011

**ORDER**

Upon Defendant's Motion for Recusal.

*Denied.*

James T. Wakley, Esquire, Department of Justice, Wilmington, Delaware; attorney  
for the State of Delaware.

Mr. Ronald N. Johnson, *pro se*

WITHAM, R.J.

Defendant has submitted a motion requesting that I recuse myself from this case. For the reasons set forth in this order, the motion is denied.

### **FACTS**

Defendant was convicted of Possession of a Deadly Weapon by a Person Prohibited, a felony, and simple menacing on July 13, 1999 after a trial held before me. An incident that would form the basis for repeated motions for recusal occurred before sentencing. I was attending an event commemorating the opening of a new law office by the County's former chief prosecutor. Inexplicably, the former chief prosecutor made an off-hand remark to the effect that Defendant was a bad man who had threatened his family.<sup>1</sup> The statement was unsolicited and clearly inappropriate. The statement had no influence on my impartiality, and it was already general knowledge that Defendant had been accused of making the threats. I informed the parties about the statement before sentencing. Defendant was sentenced to a period of 18 years at Level 5 because he was a habitual offender. On appeal, the Delaware Supreme Court, upheld the conviction and the sentence.<sup>2</sup>

Defendant subsequently filed his first motion for post-conviction relief, and sought my recusal. Both motions were denied. Defendant has filed his second motion for post-conviction relief. He has also submitted a motion for recusal, which is essentially identical to his previous motion that was denied.

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<sup>1</sup> The *ex-parte* communication as alleged can be better described as an off-the-cuff comment by a former Deputy Attorney General at a public social gathering held on The Green in Dover, Delaware on the occasion of the opening of his law office in late May, 1999.

<sup>2</sup> *Johnson v. State*, 797 A.2d 1206 (Del. Supr. 2002).

***Standard of Review***

When conducting a recusal analysis under Canon 3C(1) of the Delaware Judges' Code of Judicial Conduct, the Court must conduct a two part test. First, the judicial officer whose recusal is sought must be satisfied, as a matter of subjective belief, that he or she is free of bias or prejudice concerning the claimant. Second, the judicial officer must ensure that there is not an appearance of bias that is sufficient to cast doubt upon the Court's impartiality.<sup>3</sup>

**DISCUSSION**

The issue of recusal has been thoroughly addressed by this Court in its Orders dated November 20, 2006 and January 7, 2000.<sup>4</sup> The Court has also been upheld on direct appeal.<sup>5</sup> The Court remains convinced that recusal is inappropriate. The reasons for denying the motion to recuse will be reiterated.

First, I have no subjective bias against Defendant. The former prosecutor's off-hand remark was improper, which is the reason that I informed the parties about it. However, as explained in previous orders on this issue, I find that it had absolutely no impact on my impartiality.

Second, there is no objective basis for inferring bias except for the former prosecutor's inexplicable, unsolicited comment. There was no intentional withholding of information, and the comment was fully disclosed at the first

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<sup>3</sup> *Los v. Los* 595 A.2d381, 384-85 (Del. 1991).

<sup>4</sup> *State v. Johnson*, 2000 WL 303630 (Del. Super.)

<sup>5</sup> *Johnson v. State*, 797 A.2d 1206 (Del. Supr. 2002).

appropriate opportunity. Moreover, the substance of the allegation that Defendant had made threats were available in news articles well before trial. The fact that I disclosed the statement to the parties prior to sentencing mitigates the suggestion of bias. Additionally, the mere fact that I have presided over previous proceedings involving Defendant and issued adverse rulings does not, as a matter of law, show objective bias.<sup>6</sup> Defendant has had over a decade to uncover objective evidence of bias. He has been unable to do so, and his repeated motions for recusal offer nothing new. Therefore, the Court finds that there is no objective evidence of bias against Defendant.

Furthermore, recusal is not indicated in a situation where the Judge is engaged in the actual conduct of judicial proceedings without demonstrating impropriety.

### **CONCLUSION**

Both prongs of the *Los* analysis indicate that recusal is unnecessary. Therefore, Defendant's motion is **DENIED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.  
Resident Judge

WLW/dmh

oc: Prothonotary

xc: Mr. Ronald N. Johnson, *pro se*  
James T. Wakley, Esquire

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<sup>6</sup> *Weber v. State*, 547 A.2d 948 (Del. 1988).